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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,630	02/28/2002	Donald J. McMichael	KCX-518C (17507C)	5367

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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/085,630

Applicant(s)

MCMICHAEL ET AL.

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6 and 11-21 is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6 and 8-10 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al. (5,318,543; hereinafter Ross'543) in view of Dutchik (5,590,778) and Fischer (5,289,919). Ross'543 discloses a kit (10) for holding surgical articles comprising a tray (13) having a plurality of planar surfaces (at least two planar surfaces) are offset vertically and at least one recess disposed in the at least one of the planar surfaces, a container (20) containing at least two different types of articles (18, 19) disposed within at least one of the planar surfaces and a cover (12) sealed to at least a portion of the tray. Ross'543 further discloses the container (20) must be removed from the tray prior to access to the articles (17, 27) and other accessory articles such as a sterile drape, swabs, a packet of cotton and so forth could also be placed in the recesses if desired. Ross'543 also discloses the other claimed limitations except for the container comprises a base and a lid that define an interior space such that the container completely surrounds the articles. Dutchik teaches a package/kit (10) for holding medical devices comprising a tray (50, 52) having a recess adapted to receive a container (14) and a cover (54) sealed to at least a portion of the tray. The container having a base (16) for holding medical devices and a lid (36) for closing the container (Figure 3). Fischer shows a kit (10) comprising a tray (15) having a plurality of recesses (34) adapted to receive a plurality of containers (38) and each container having a base and a lid. It would have been obvious to one having ordinary skill

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in the art in view of Dutchik and Fischer to modify the container of Ross'543 so the container comprises a base and a lid that completely surrounds the articles for better protecting the articles and to facilitate opening and closing the container. The container of Ross'543 as modified is capable to be reclosable and is capable of receiving the articles after use prior to disposal.

Allowable Subject Matter

3. Claims 5, 7 and 11-21 are allowed.

Response to Arguments

Applicant's arguments filed on 9/16/2004 have been fully considered but they are not deemed to be persuasive.

Applicant argues that the combination of references does not disclose a container in which at least two different types of articles are completely retained in the interior space of the container is noted. This is not persuasive because Ross'543 is clearly disclosed the container 20 containing at least two different types of articles 18, 19 and the container 20 is capable of receiving the articles after use prior to disposal.

Applicant's argument with respect to the combination of the references as applied would result in a container that houses only a single type of medical apparatus is noted. This is not persuasive because the container of Ross'543 is containing at least two different types of articles 18, 19 as taught by Ross'543 (Figure 3). The result container comprises a base and a lid for

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containing at least two different types of articles as well because the modification is only applied to the container, not the contents. Regarding the phrase “adapted to be reclosable so that the accessory articles after use are capable of being retained in the interior space prior to disposal” is given no further limitations to the claim because the container comprises a base and a lid as taught by Dutchik and Fischer is capable to be reclosable and is capable of receiving the articles after use in the interior space prior to disposal.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
November 3, 2004

A handwritten signature in black ink, appearing to read 'Luan K. Bui', with a long horizontal stroke extending to the right.

Luan K. Bui
Primary Examiner